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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBIN RAY SANDERSON,

Defendant and Appellant.

A111921

(San Mateo County  
Super. Ct. No. SC058440)

A jury found defendant Robin Ray Sanderson guilty of the offense defined by Vehicle Code section 23153, subdivision (a), making it unlawful for “any person, while under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle and concurrently do any act forbidden by law . . . in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.” The jury further found that in committing the offense, defendant personally inflicted great bodily injury on the victim (Pen. Code, § 12022.7, subd. (a)). The jury also found defendant guilty of hit and run driving, resulting in injury (Veh. Code, § 20001, subd. (a)), and found true allegations that defendant had suffered four prior felony convictions, one of which was charged as a strike (Pen. Code, § 1203, subd. (e)(4)).

The court sentenced defendant to a term of 13 years 4 months in state prison. We affirm.

## **FACTS**

On the evening of March 17, 2005, several people residing on Monte Diablo in San Mateo heard a car collision. The collision pushed Macario Enriquez's parked car approximately 44 feet into a second car, which was pushed through a fence into a yard. Police estimated that the vehicle that struck Mr. Enriquez's car would have been traveling at a speed exceeding the posted limit of 25 miles per hour. Mr. Enriquez, who had been standing at the trunk of his car, suffered serious injuries resulting in hospitalization for over a month, three surgeries and the loss of his spleen.

Although no one saw the collision, witnesses reported seeing a white truck marked "San Mateo Rentals" drive through an intersection just before the accident, drive away at up to 45 miles per hour after the accident, and make a right turn. The truck did not stop after the collision. Police Officer Todd Mefford, responding to reports of the accident, found the truck parked several blocks away. A man, later identified as defendant, got out of the truck and walked away quickly. A short time later, defendant emerged from a nearby driveway, walking in a hunched-over way. The police detained defendant, who said, "Did someone get hit?" "Was there someone standing next to the car?" "I heard someone scream," and "I hope I didn't hurt anybody." Defendant admitted that he had heard a blood-curdling scream and knew he had hit someone. The truck contained a rental agreement disclosing that it had been rented by defendant. Officer Mefford testified that defendant failed several field sobriety tests and his condition was consistent with methamphetamine usage. The People's expert witness provided additional explanation of the symptoms and results of methamphetamine use, also explaining how methamphetamine use would impair driving skills.

## **DISCUSSION**

Defendant contends that reversible error resulted from the failure of the court to instruct the jury that to find him guilty of violating Vehicle Code section 23153, subdivision (a), they had to agree on the "act forbidden by law" that defendant committed while driving while intoxicated. The prosecutor argued that at the time defendant struck Mr. Enriquez's car, he was violating the basic speed law (Veh. Code, § 22350), making

unsafe turns by veering over to the side of the roadway (Veh. Code, § 22107) and committing ordinary negligence. The court instructed the jury on the elements of the relevant law.

In a criminal case, the jury's verdict must be unanimous, and the jury must agree unanimously that the defendant is guilty of a specific crime. (*People v. Russo* (2001) 25 Cal.4th 1124, 1132.) It follows that when the evidence suggests more than one discrete crime, either the prosecution must elect among the crimes or the court must require the jury to agree on the same criminal act. (*Ibid.*) The purpose of the unanimity instruction is to ensure that the jury agrees on a particular crime. It must be given when conviction on a single count could be based on two or more discrete criminal events, but not where multiple theories or acts may form the basis of a guilty verdict on one discrete criminal event. (*Id.* at pp. 1134-1135.) "In deciding whether to give the instruction, the trial court must ask whether (1) there is a risk the jury may divide on two discrete crimes and not agree on any particular crime, or (2) the evidence merely presents the possibility the jury may divide, or be uncertain, as to the exact way the defendant is guilty of a single discrete crime. In the first situation, but not the second, it should give the unanimity instruction." (*Id.* at p. 1135.) Moreover, when a unanimity instruction is warranted, the trial court has a sua sponte duty to give it. (*People v. Mayer* (2003) 108 Cal.App.4th 403, 418.)

Here, there was but a single discrete crime, although it could have been based on more than one act. The criminal event at issue for purposes of Vehicle Code section 23153, subdivision (a), is the event of driving while intoxicated and, while driving, committing an act or acts forbidden by law. The different acts, however, are only different means of committing the single, discrete, crime. The point was explained by the court in *People v. Mitchell* (1986) 188 Cal.App.3d 216, where the defendant, like defendant here, was charged with violating Vehicle Code section 23153, subdivision (a). In that case, there was evidence that the defendant had violated the basic speed law and also had engaged in a speed contest. As here, the defendant complained that the court failed to give a unanimity instruction. The court pointed out that the essence of Vehicle

Code section 23153 is driving while intoxicated, not the additional act of violating the law. “This being the rule concerning the nature of the drunk driving offense, it follows that the statute’s reference to ‘act forbidden by law,’ . . . involves only a definitional refinement of the offense, not a legislative determination that a statutory violation such as unsafe speed or speed contest is a separate act from the standpoint of the gravamen of the offense which is, simply, driving while intoxicated.” (*People v. Mitchell*, at p. 221.) As the different “forbidden acts” are simply alternate ways of proving a necessary element of the same offense, and do not themselves constitute separate chargeable offenses, no unanimity instruction is needed. (*Id.* at p. 222.) We agree.

In addition, in light of the nature of the accident, where defendant struck a parked car with such force that it ran over Mr. Enriquez, traveled 44 feet, struck another car and pushed that car through a fence, any error in failing to give the instruction was harmless beyond a reasonable doubt. (See *People v. Thompson* (1995) 36 Cal.App.4th 843, 853.) No juror reasonably could have believed that defendant was committing negligence or making an unsafe turn but not believe that he was violating the basic speed law.

#### **DISPOSITION**

The judgment is affirmed.

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STEIN, J.

We concur:

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MARCHIANO, P. J.

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SWAGER, J.